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is done with a bad motive or with much gross negligence as to amount to positive misconduct, or in a manner so wanton and reckless as to manifest a willful disregard of the rights of others, the plaintiff, in an action to recover damages from the wrongful act, may recover, not only determinable money loss, but such punitive damages as are called for by the circumstances of the case.

[Ed. Note.—For other cases, see Damages, Cent. Dig. §§ 193-201; Dec. Dig. § 91.\* 5 Va.-W. Va. Enc. Dig. 748.]

Error to Circuit Court of City of Norfolk.

Action by the Franklin Plant Farm, Incorporated, against F. F. Nash and another in trespass. Judgment for defendants, and plaintiff brings error. Reversed and remanded.

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FRENCH et al. v. CHAPIN-SACKS MFG. CO., Inc.

Nov. 11, 1915.

[86 S. E. 842.]

**1. Waters and Water Courses (§ 77\*)—Pollution—Actions—Burden of Proof.**—In a suit to enjoin the alleged pollution of a stream, the burden rested on complainants to establish the allegations of their bill by a preponderance of the evidence.

[Ed. Note.—For other cases, see Waters and Water Courses, Cent. Dig. §§ 65, 66; Dec. Dig. § 77.\* 13 Va.-W. Va. Enc. Dig. 672.]

**2. Appeal and Error (§ 41\*)—Decisions Appealable—Statutory Provisions.**—Under Code Supp. 1910, § 3454, authorizing appeals of writs of error when any person thinks himself aggrieved by a final judgment, decree, or order in any civil case, the complainant may appeal from a final decree refusing an injunction, notwithstanding section 3438, providing that, when a circuit or corporation court, or a judge thereof, refuses to award an injunction, a copy of the proceedings and the original papers, with any orders entered in the proceedings, may be presented to a judge of the Court of Appeals, who may thereupon award an injunction, as the right to appeal from a final decree or decree adjudicating the principles of the cause is the same in a case for equitable relief by injunction as in other equity cases, and it was plainly not the purpose of the Legislature to ingraft an amendment on the general statute by implication.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 127-155, 157, 158, 172, 178-184, 186-188, 190, 194, 196, 197; Dec. Dig. § 41.\* 1 Va.-W. Va. Enc. Dig. 437.]

Appeal from Circuit Court, Shenandoah County.

Suit by G. Mark French and others against the Chapin-Sacks

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

Manufacturing Company, Incorporated. From a decree refusing an injunction, complainants appeal. Affirmed.

*Tavener & Bauserman*, of Woodstock, for appellants.

*F. H. Brumback*, of Woodstock, for appellee.

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CURTIS & SHUMWAY, Inc. v. WILLIAMS.

Nov. 11, 1915.

[86 S. E. 848.]

**1. Master and Servant (§ 177\*)—Injuries to Servant—Fellow Servant.**—Where injury to a servant is caused directly by the act or omission of a fellow servant, he cannot recover from the master for such injury.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 307, 352, 353; Dec. Dig. § 177.\* 1 Va. Law Reg. 617; 5 Va. Law Reg. 637, 868.]

**2. Master and Servant (§ 188\*)—Injuries to Servant—Fellow Servant—Who Are.**—The general manager of defendant, who is also head of the distinct department, is not a fellow servant, so as to prevent plaintiff's recovery for injuries caused by his negligence.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. § 436; Dec. Dig. § 188.\* 13 Va. Law Reg. 492, 760.]

**3. Master and Servant (§ 278\*)—Injuries to Servant—Character of Employment.**—Evidence held insufficient to show that plaintiff, injured while at work, was required to perform duties outside of his employment, and was therefore entitled to warning by his master as to the dangers of such employment.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 954, 956-958, 960-969, 971, 972, 977; Dec. Dig. § 278.\*]

**4. Trial (§ 233\*)—Instructions—Form.**—An instruction that, if the jury believed that plaintiff was injured by the negligence of defendant as charged in the first count of the declaration, they should find for plaintiff, was improper, where the count covers 3½ pages of the record, thus requiring the jury to extract from it the pertinent matter on which to base their verdict.

[Ed. Note.—For other cases, see Trial, Cent. Dig. §§ 527-530; Dec. Dig. § 233.\*]

**5. Master and Servant (§ 150\*)—Injury to Servant—Duties of Master—Warning and Instruction.**—The rule that it is the master's duty to warn and instruct the servant as to dangers incident to the work which are not open and obvious must be applied, subject to the rule that a person of matured age and apparently possessed of average intelligence seeking employment may be presumed by the

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.